# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1943

# No. 345

EMANUEL POLLOCK, APPELLANT,

*vs.*

H. T. WILLIAMS, AS SHERIFF OF BREVARD COUNTY, FLORIDA

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

INDEX.



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 12, 1943.

—8902

[fols. 1-3] [Caption omitted]

[fol. 4] **IN THE CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA**

2980

HABEAS CORPUS

EMANUEL POLLOCK, Petitioner,

vs.

H. T. WILLIAMS, as Sheriff of Brevard County, Florida, Defendant

PETITION FOR WRIT OF HABEAS CORPUS—Filed January 11, 1943

Comes now Emanuel Pollock, alias Mann Pollock, and shows to the court that the defendant, H. T. Williams, is the duly qualified and acting Sheriff of Brevard County, Florida, and ex-officio keeper of the jail of said county and custodian of prisoners kept therein, and that the said H. T. Williams, as said Sheriff, unlawfully restrains the petitioner of his liberty in violation of the Constitution of the United States and laws duly enacted pursuant thereto; that the said sheriff so restrains petitioner under a pretended commitment from the County Judge's Court having jurisdiction within said county; that the said commitment purports to be based upon a judgment of conviction and [fol. 5] sentence for a pretended violation of a certain statute of the State of Florida, being Chapter 7917, Laws of Florida, 1919, and now being Sections 817.09 and 817.10 of the Florida Statutes, 1941. Petitioner states that said statute is repugnant to the 13th and 14th Amendments to the Constitution of the United States of America, and acts of Congress, particularly Section 56 Title 8 of the United States Code, duly enacted pursuant to the provisions of said amendments, and is void and of no effect. By reason whereof the said court was without jurisdiction of said cause, that no offense against the laws of the State of Florida was charged in said warrant, and the said judgment, sentence and commitment are void, and the imprisonment of petitioner is illegal and in violation of his rights under the Constitution and laws of the United States.

And the petitioner further states that, at the trial aforesaid, he was not told that he was entitled to counsel, and that counsel would be provided for him if he wished, and he did not know that he had such right. Petitioner was without funds and unable to employ counsel. He further avers that he did not understand the nature of the charge against him, but understood that if he owed any money to his prior employer and had quit his employment without paying the same, he was guilty, which facts he admitted. Whereupon the record shows that a plea of guilty was entered, and the aforesaid judgment and sentence was thereupon pronounced upon him, all in violation of his rights under the Constitution and laws of the United States of America and of the State of Florida. A copy of the warrant, plea and judgment is attached hereto and made a part hereof.

Wherefore, petitioner prays that a writ of habeas corpus be issued and directed to the defendant herein, commanding [fol. 6] him to make due return thereto, and to have the body of your petitioner before the court at a time and place therein fixed, and upon hearing that judgment be entered discharging petitioner from custody, and the restraint aforesaid.

Emanuel his XX mark Pollock, Petitioner. Maguire, Voorhis & Wells, W. H. Poe, Attorneys for Petitioner.

STATE OF FLORIDA,
County of Brevard, ss:

Personally appeared Emanuel Pollock before the undersigned authority, and upon being duly sworn, deposed and said:

That he is the petitioner named in the foregoing petition, that he is familiar with the facts alleged in said petition, and said allegations of fact are true.

Emanuel his X mark Pollock.

Subscribed and sworn to before me this 11 day of January, A. D. 1943. Mamie Gilliam, Notary Public, State of Florida at Large. My commission expires Feb. 12, 1945. (Notary Seal.)

[fol. 7] EXHIBIT TO PETITION

BREVARD COUNTY,
State of Florida:

STATE OF FLORIDA
vs.
MANN POLLOCK

In the Name of the State of Florida, to all and singular the Sheriff, his lawful deputies, or any Constable; of the State of Florida:

Whereas, C. W. Bates has this day made oath before me that on the 17th day of October A. D. 1942, in this county aforesaid, one Mann Pollock did then and there, with intent to injure and defraud under and by reason of a contract and promise to perform labor and service, procure and obtain money, to-wit: the sum of $5.00, as advances from one J. V. O'Albora, a corporation, contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Florida;

There are, therefore to command you to arrest instanter the said Mann Pollock and bring him before me to be dealt with according to law.

Given under my hand and seal this 2nd day of January, A. D. 1943.

Vassar B. Carlton, County Judge, Brevard County, Florida. (Seal.) (C. J. Seal.)

[fol. 8] In Court of County Judge, Brevard County, State of Florida. State of Florida vs. Mann Pollock. Warrant. Filed 5th day of Jan. 1943. Vassar B. Carlton, County Judge, Brevard County, Florida.

Received this Warrant 5th day of Jan., —— A. D. and executed it on the 5th day of Jan. A. D. 1943 by arresting the within named Mann Pollock and having him now before the Court Jan. 5, 1943.

Fees:

| | |
|---|---|
| Arrest | $2.00 |
| Return | .25 |
| Committing to Jail | 1.00 |
| Mileage 18 | 2.25 |
| Release | .50 |
| Approving Bond | |
| Total | $6.00 |

Sheriff, Brevard County, Fla., by —— ——, Deputy Sheriff.

[fol. 9] EXHIBIT TO PETITION

STATE OF FLORIDA

vs.

MANN POLLOCK

Date of trial January 5, 1943.

Defendant called for trial January 5, 1943, and plead guilty.

Judgment of Court:

"It is considered, ordered and adjudged that the defendant, Mann Pollock, is guilty as charged in the affidavit. Further ordered that said defendant do pay a fine of $100.00 to include costs of this case, and that in default of payment thereof he serve a period of 60 days in the County jail of Brevard County, Florida."

Commitment issued January 5, 1943.

Given under my hand and seal this 5th day of January, A. D. 1943.

Vassar B. Carlton, County Judge. (C. J. Seal.)

As shown in Criminal Docket No. 14, Page 338.

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[fol. 10] IN CIRCUIT COURT OF BREVARD COUNTY

WRIT OF HABEAS CORPUS—Filed January 11, 1943

The State of Florida to H. T. Williams, as Sheriff in and for Brevard County, Florida, Greeting:

It having been made to appear to the Court by petition herein that you unlawfully restrain of his liberty, one Emanuel Pollock, alias Mann Pollock, in violation of the Constitution and laws of the United State- of America and of his rights under the Constitution and laws of the United States of America and the State of Florida, and the Court being willing to inquire into the truth and justice thereof,—

Therefore, you are hereby commanded to be and appear before the undersigned Judge of said Court at Titusville, Florida, on the 11th day of January, 1943, at 10 o'clock

A. M. and make due return to this writ as required by law; and if you have the said Emanuel Pollock, alias Mann Pollock, in your custody or control, that you produce his body at said time and place together with the cause of his detention and restraint, and show cause why he should not be discharged therefrom.

Herein fail not, at your peril, and have you then and there this writ.

Done and Ordered at Titusville, Florida this 11th day of January, 1943.

M. B. Smith, Judge.

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[fol. 11] In Circuit Court of Brevard County

Return of Sheriff—Filed January 11, 1943

Comes now H. T. Williams, as Sheriff in and for Brevard County, Florida, in response to writ of habeas corpus issued by the above named Court and states to the Court that he holds the petitioner under and by virtue of the commitment issued out of the County Judge's Court of Brevard County, Florida, based upon the judgment and conviction as set forth in the petition and thereupon brings the defendant before the Court for its judgment in the premises.

This 11th day of January, A. D. 1943.

H. T. Williams, As Sheriff of Brevard County, Florida.

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[fol. 12] In Circuit Court of Brevard County

Judgment—Filed January 11, 1943

This cause came on to be heard on the petition, the writ of habeas corpus, and the return of the defendant thereto, and the Court hearing argument of counsel and being sufficiently advised in the premises finds that the statute under which the warrant, judgment and commitment were founded is unconstitutional and void and the imprisonment of the petitioner illegal.

It Is, Thereupon, Considered, Ordered and Adjudged that the Petitioner be and he is hereby discharged from the custody of the defendant.

It Is Further Considered, Ordered and Adjudged that the petitioner do have and recover his costs in the sum of $—— which costs are hereby awarded in his favor.

Done and Ordered at Titusville, Florida, this 11th day of January, 1943.

M. B. Smith, Circuit Judge.

No. 19115. Filed Jan. 11, 1943 at 2:15 o'clock P. M. Recorded in the Public Records of Brevard County, Florida, in the Book and Page Noted above. (Signed) G. M. Simmons, Clerk Circuit Court. (Circuit Court Seal.)

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[fol. 13] In Circuit Court of Brevard County

Application for Leave to Appeal—Filed January 27, 1943

Comes now the State of Florida and respectfully moves the Court to enter its order allowing the State of Florida to enter its appeal to the Supreme Court of Florida to review the judgment of the Circuit Court of Brevard County, Florida, bearing date the 11th day of January, A. D. 1943, entered in the above styled cause and recorded in the records of said Court in Book 18, P. 99.

(Signed) J. Tom Watson, Attorney General of Florida; (Signed) Woodrow M. Melvin, Assistant Attorney General, Counsel for State of Florida.

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[fol. 14] In Circuit Court of Brevard County

Order Allowing Appeal—Filed January 27, 1943

This cause coming on to be heard this day upon the application of the Attorney General of Florida for the entry of an order allowing the State of Florida to enter its appeal to the Supreme Court of Florida to review the judgment of this Court bearing date the 11th day of January, A. D. 1943, said judgment being entered in the above styled cause and recorded in the records of this Court in Book 18, page 99, and the Court being advised of its opinion in the premises, it is, therefore,

Ordered, Adjudged and Decreed that the State of Florida be and is hereby allowed to enter its appeal to the Supreme

Court of Florida to review the judgment of this Court bearing date the 11th day of January, A. D. 1943, said judgment being entered in the above cause and recorded in the records of this Court in Book 18, page 99.

Done and Ordered at Titusville, Florida, this 27th day of January, A. D. 1943.

M. B. Smith, Circuit Judge.

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[fol. 15] In Circuit Court of Brevard County

Notice of Appeal—Filed January 27, 1943

The State of Florida takes and enters this its appeal to the Supreme Court of Florida to review the judgment of the Circuit Court of Brevard County, Florida, bearing date the 11th day of January, A. D. 1943, entered in the above styled cause and recorded in the records of said Court in Book 18, page 99, and all parties to said cause are called upon to take notice of the entry of this appeal.

(Signed) J. Tom Watson, Attorney General of Florida; (Signed) Woodrow M. Melvin, Assistant Attorney General, Counsel for State of Florida.

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[fol. 16] In Circuit Court of Brevard County

Assignments of Error—Filed February 4, 1943

Comes now the State of Florida and presents this its Assignment of Error upon which the reversal of the judgment of the Circuit Court of Brevard County, Florida, appealed from, will be sought:

(1) That the Court by its judgment of January 11, 1943, recorded in Circuit Court Minute Book 18, page 99, erred in adjudging that Section 817.09, Florida Statutes 1941, is unconstitutional.

(2) That the Court by its judgment of January 11, 1943, recorded in Circuit Court Minute Book 18, page 99, erred in adjudging that Section 817.09, Florida Statutes 1941, is repugnant to the 13th and 14th Amendments to the

Constitution of the United States and the Acts of Congress, particularly Section 56, Title 8 of the United States Code.

(Signed) J. Tom Watson, Attorney General;
(Signed) Woodrow M. Melvin, Assistant Attorney General, Counsel for the State of Florida.

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[fol. 17] In Circuit Court of Brevard County

Affidavit of Service—Filed February 4, 1943

State of Florida,
County of Leon:

On this day personally appeared before me, a Notary Public in and for the State at large, Woodrow M. Melvin, Assistant Attorney General, who, being first duly sworn, on oath says that he did on this day serve Messrs. Maguire, Voorhis, and Wells, Attorneys for Petitioner in the above entitled cause, with a copy of the State's Application for Leave to Appeal, the Order allowing appeal, Notice of Appeal, Assignments of Error, and Directions to the Clerk. The service was made by mailing said copies sealed in an envelope addressed to said Messrs. Maguire, Voorhis & Wells, Attorneys at Law, Orlando, Florida, with sufficient postage thereon to insure its delivery at destination, the same being mailed in the post office at Tallahassee, Florida, on this the 2nd day of February.

Woodrow M. Melvin.

Sworn to and subscribed before me this 2nd day of February, 1943. Evelyn Davis, Notary Public, State of Florida at —. My Commission Expires Mar. 7, 1943. (Notary Seal.)

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[fol. 18] In Circuit Court of Brevard County

Praecipe for Transcript of Record—Filed February 4, 1943

The Clerk of this Honorable Court will please prepare the transcript of record in the cause of Emanuel Pollock versus H. T. Williams, as Sheriff of Brevard County, Florida, and include in said transcript the following papers:

(1) Petition for Writ of Habeas Corpus, and Exhibits thereto attached.

(2) Writ of habeas corpus.
(3) Return filed by H. T. Williams, as Sheriff, to writ of habeas corpus.
(4) Judgment of the Court entered on January 11, 1943, and recorded in Minute Book 18, page 99.
(5) Application for leave to appeal.
(6) Order allowing appeal.
(7) Notice of appeal.
(8) Assignments of error filed by the State.
(9) Affidavit of Service.

The Clerk will please certify and transmit to the Clerk of the Supreme Court of Florida an original copy of the transcript; deliver one true copy of the transcript to [fol. 19] Maguire, Voorhis and Wells, Attorneys at Law, Orlando, Florida, Attorneys of Record for Emanuel Pollock, and transmit to the Attorney General, Tallahassee, Florida, one true copy of the transcript.

(Signed) J. Tom Watson, Attorney General;
(Signed) Woodrow M. Melvin, Assistant Attorney General, Counsel for the State of Florida.

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[fols. 20-21] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 22] IN SUPREME COURT OF FLORIDA, JUNE TERM A. D. 1943 EN BANC

H. T. WILLIAMS, as Sheriff of Brevard County, Florida, Appellant,

vs.

EMANUEL POLLOCK, Appellee

An Appeal from the Circuit Court for Brevard County, M. B. Smith, Judge.

Maguire, Voorhis & Wells, R. F. Maguire and W. H. Poe, for Appellant, J. Tom Watson, Attorney General and Woodrow M. Melvin, Assistant Attorney General, for Appellee.

OPINION—Filed July 24, 1943

THOMAS, J.:

The appellee pleaded guilty of violating Section 817.09 Florida Statutes, 1941, and was held under a commitment when discharged upon a writ of habeas corpus by the circuit judge who had the conviction that the act offended the Constitution of the United States, presumably the Thirteenth Amendment prohibiting involuntary servitude. The act denounces as a misdemeanant "any person * * * who * * *, with intent to injure and defraud, under and by [fol. 23] reason of a contract or promise to perform labor or service [procures] * * * money or other thing of value as a credit, or as advances * * *."

Better to present our observations on the matter involved we will give also the substance of a related statute, Section 817.10, Florida Statutes, 1941, declaring that the "failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained * * * shall be prima facie evidence of the intent to injure and defraud."

The former was Section 1, the latter Section 2, of Chapter 7917, Laws of Florida, Acts of 1919.

This is not the first challenge of the act which has appeared in this court. The identical matter was considered in Phillips vs. Bell, 84 Fla. 225, 94 So. 699, where the court concluded that the portion of the law defining the crime was harmonious with the Thirteenth Amendment, and observed, without deciding the point, that if the part referring to the prima facie character of certain evidence should be pronounced unconstitutional the ruling would not affect the remainder. The discussion was largely devoted to the applicability of the decisions of the Supreme Court of the United States in Bailey vs. State of Alabama, 211 U. S. 452, 29 Sup. Ct. Rep. 141, 53 L. Ed. 278, and in another case of the same title reported in 219 U. S. 219, 31 Sup. Ct. Rep. 145, 55 L. Ed. 191, to the proposition under study.

We are inclined to adhere to our former decision, but we recognize our duty to refer to the decisions of the Supreme Court of the United States where the interpretation of the federal constitution is involved. Bearing in mind this obligation we will examine, in their order, the first and second cases of Bailey vs. Alabama and Phillips vs. Bell, *supra*,

[fol. 24] then determine the effect upon them of a recent opinion of the Supreme Court of the United States, Ira Taylor v. State of Georgia, *infra*.

In the first there was entertained a petition for habeas corpus in which the constitutionality of a law making it an offense "to enter into a contract * * * for service with intent to * * * defraud the employer, and, after thereby obtaining money * * * from such employer, * * * and without refunding the money or paying for the property, to refuse to perform the service." An amendment made the "refusal or failure [to perform] without just cause prima facie evidence of the intent." The court considered these two features, one denouncing a fraudulent act and one providing a method of proof, together with a rule in Alabama preventing a person from testifying as to his motive. No testimony had been taken in the case and the question was the unconstitutionality of the act and the amendment on their face without regard to the practical application of the amendment and the local rule dealing with proof. This is apparent from the comment of the court: "When the case comes to trial it may be that the prosecution will not rely upon the statutory presumption, but will exhibit satisfactory proof of a fraudulent scheme, so that the validity of the addition to the statute will not come into question at all."

We think it very significant that the court remarked upon the lack of doubt that the offenses defined could be made a crime. Gist of the decision, as we understand it was, summarizing, that the part of the law describing the crime and the one providing for the presumption were not interdependent and that if, in the prosecution, the state did not resort to the latter the validity of the former would be unaffected.

The petitioner was remanded, tried and found guilty. [fol. 25] The Supreme Court of Alabama affirmed the judgment and again the Supreme Court of the United States reviewed the case. It then appeared that the conviction of the defendant was obtained because of the operation of the amendment providing that refusal of the employee to perform was prima facie evidence of intent to defraud the employer. In their analysis the court stressed the possibility of conviction for crime simply because of a breach of contract and failure to discharge a debt. By such flimsy testimony could the presumption of innocence be overcome.

This was particularly true in view of the rule preventing a defendant from swearing that he intended no fraud.

It was the gist of opinion that the statute designed to punish fraud became an instrument to compel service when the provision for prima facie evidence of guilt was brought into play, especially, as will be seen when we discuss Taylor vs. Georgia, *infra*, when the defendant was prohibited from testifying about his purpose or intention. The court concluded that the Alabama law "in so far as it makes the refusal or failure to perform the act or service, without refunding the money or paying for the property prima facie evidence of the commission received [sic] of the crime which the section defines, is in conflict with the 13th Amendment, * * * and is therefore invalid."

From a perusal of both opinions the deduction is inevitable that the law denouncing the crime was not held in conflict with the constitution until made so by invoking in a given case the rule with reference to prima facie evidence and that, standing alone, it was not invalid.

We reach now, in its turn, our own decision in Phillips vs. Bell, *supra*, where the chief justice expressed the opinion, concurred in by the other members of the court, that the section of the Florida Statutes defining the offenses [fol. 26] was not inharmonious with the Constitution of the United States. One feature of that controversy was common to the first Bailey case, no testimony appeared in the record and so there was no need to determine whether the second section, with regard to prima facie evidence, was invalid or whether the first could be invalidated by it. Incidentally, that characteristic is present in the instant case for, as we stated at the outset, the plea was guilty, hence no evidence was taken.

This court drew attention to certain "material differences" between the first portions of the Alabama and Florida Statutes defining the crime and to the similarity of the parts establishing the prima facie evidence rule, but the rationale of the case and of both decisions of the United States Supreme Court to which we have alluded was, we believe, the declaration of the validity of the first section of the act when not infected by employment of the second.

The question now is the effect upon these decisions of the one rendered by the Supreme Court of the United States in, Ira Taylor vs. State of Georgia, 315 U. S. 25, 62 Sup. Ct.

Rep. 415, 86 Law Ed. 615. Mr. Justice Byrnes by way of introduction stated that the "Appellant was indicted * * * for violation of [sections] 7048 and 7409, of Title 26 of the Georgia Code." Although the former defined as crime contracting to perform services "with intent to procure money * * * and not to perform * * * to the loss and damage of the hirer; or after having so contracted, * * * [procuring] from the hirer money, * * * with intent not to perform such service, * * *" the latter provided that "satisfactory proof of the contract," the procurement of the money, the failure to perform or failure to return the money and loss or damage to the hirer, should be "deemed presumptive evidence of the intent referred to in the preceding section."

[fol. 27] Clearly he could not have been indicted for violation of the latter section and while we do not wish to appear hypercritical we draw attention to the phraseology because of the frequent use of the plural in the opinion. It is stated that appellant asserted by way of demurrer to the indictment that sections 7408 and 7409 "were repugnant * * * to the Thirteenth Amendment." After trial upon the evidence had resulted in a conviction a new trial was sought upon this ground and others.

The court held that "There [was] no material distinction between the Georgia statutes challenged [there] and the Alabama statute which was held to violate the Thirteenth Amendment in Bailey vs. Alabama, * * *" (the second case.) The court disposed of the argument—it was the same as the one presented in the second Bailey case—that one section dealt with punishment of fraud and the other a rule of evidence, by announcing that the latter "actually * * * embodies a substantive prohibition which squarely contravenes the Thirteenth Amendment * * *." The conclusion was "that sections of the Georgia Code upon which this conviction rests are repugnant to the Thirteenth Amendment * * *." It will be noted that there is no qualification such as appeared in the latter Bailey case where, to repeat, the Alabama statute was declared invalid "*so far as it* [made] * * * *failure to perform* * * * without refunding the money * * * *prima facie evidence*" of guilt. (Italics supplied by us.)

In view of the unqualified declaration that both were unconstitutional our first impression was that we should recede from the construction we had announced in Phillips

vs. Bell, *supra*. This was emphasized because of the resemblance of the Georgia statute to ours and the finding that no essential distinction existed between the former and the law of Alabama. Thus the axiom "two things [fols. 28-29] equal to the same thing are equal to each other" seemed not inappropriate and the Florida act would fall with that of Georgia, despite our view in Phillips, vs. Bell that "there [were] material differences between the Alabama statutes * * * and the Florida statute."

Upon reflection it seems, however, that it was not the aim of the court to revise in the Taylor decision what had been announced in the second Bailey case.

Plainly, in both, testimony had been introduced to establish those elements necessary to raise the presumption under the statute and it was especially found that without the aid of it conviction could not have resulted. It is manifest, too, as in the later Bailey case, that the court was called upon to construe together the two sections and to determine the effect of one upon the other and of both upon the rights of the appellant. In these circumstances we are not convinced that the Supreme Court of the United States intended to declare both sections unconstitutional regardless of any state of facts that might be presented. In our zeal to follow the decisions of that high tribunal we cannot but believe that the decision in the Taylor case was confined to a situation there present. The section anent presumptive evidence had been relied upon to secure a conviction, so the court again had for determination the question of the constitutionality of the first section when the second was brought into play. Not being faced with that problem here we conclude that the first Bailey decision and ours in Phillips, vs. Bell are in accord and that they in turn are not in conflict with the rulings in the Second Bailey case and Taylor vs. State of Georgia, *supra*.

Reversed.

Buford, C. J., Terrell, Brown, Chapman, Adams and Sebring, J. J., concur.

[fols. 30-31] IN SUPREME COURT OF FLORIDA, JUNE TERM, 1943

H. T. WILLIAMS, as Sheriff of Brevard County, Florida, Appellant,

vs.

EMANUEL POLLOCK, Appellee

JUDGMENT—July 24, 1943

This cause having heretofore been submitted to the Court upon the transcript of the record of the judgment herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is error in the said judgment; it is, therefore, considered, ordered and adjudged by the Court that the said judgment of the Circuit Court be and the same is hereby reversed; it is further ordered by the Court that the Appellant do have and recover of and from the Appellee his costs by him in this behalf expended, which costs are taxed in the sum of $—, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Thomas was this day ordered to be filed.

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[fol. 32] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed August 16, 1943

To Honorable Rivers Buford, the Chief Justice of the Supreme Court of the State of Florida:

Your petitioner, Emanuel Pollock, respectfully shows:

Your petitioner was the appellee in the above entitled cause, and is the appellant here.

This cause was commenced by petition in the Circuit Court of Brevard County, Florida, by a petition for the issuance of a writ of Habeas Corpus, to be directed to the appellee, H. T. Williams, as Sheriff of Brevard County, Florida, commanding him to produce the body of the peti-

tioner before said Court and show the cause of the detention of the petitioner. It was alleged in the petition that the appellee, as ex-officio keeper of the jail of said County unlawfully restrained petitioner of his liberty in violation of the Constitution of the United States and laws duly enacted pursuant thereto; that the restraint was under a pretended commitment from the County Judge's Court in said County, purported to be based upon a judgment of conviction and sentence for a pretended violation of Chapter 7917, Laws of Florida, 1919, now Sections 817.09 and 817.10 of the Florida Statutes, 1941, which statute reads as follows:

> [fol. 33] "Section 1. (Sec. 817.09, Fla. Stat. 1941). Obtaining property by fraudulent promise to perform labor or service.—Any person in this state who shall, with intent to injure and defraud, under and by reason of a contract or promise to perform labor or service, procure or obtain money or other thing of value as a credit, or as advances, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months.
>
> "Section 2. (Sec. 817.10, Fla. Stat. 1941). Same; prima facie evidence of fraudulent intent.—In all prosecutions for a violation of sec. 817.09 the failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained or procured shall be prima facie evidence of the intent to injure and defraud."

The petitioner further alleged that said statute is and was repugnant to the 13th and 14th Amendments to the Constitution of the United States, and Acts of Congress, particularly Section 56, Title 8, of the United States Code, duly enacted pursuant to said Amendments, and is void and of no effect, by reason whereof the County Judge's Court was without jurisdiction of the cause, and that the warrant charged no offense against the laws of the State of Florida, the judgment, sentence and commitment were void, and the imprisonment of defendant was illegal, and in violation of petitioner's rights under the Constitution and laws of the United States.

The petition further alleged that at said trial petitioner did not know, and was not advised, of his right to counsel, and was without funds and unable to employ counsel; that he did not understand the nature of the charge against him, but understood that if he owed any money to his prior employer and had quit his employment without paying the same, he was guilty, which facts he admitted; that thereupon a plea of guilty was entered of record, and judgment and sentence was thereupon pronounced upon him, all in violation of his rights under the Constitution and laws of the United States and the State of Florida. A copy of the warrant, plea and judgment was attached and made a part of the petition. The charging part of said warrant, [fol. 34] which was dated January 2, 1943, was as follows:

> "C. W. Bates has this day made oath before me that on the 17th day of October, A. D. 1942, in this county aforesaid, one Mann Pollock did then and there, with intent to injure and defraud under and by reason of a contract and promise to perform labor and service, procure and obtain money, to-wit: the sum of $5.00, as advance from one J. V. D'Albora, a corporation."

The exhibits to said petition further showed that said warrant was executed on January 5, 1943, by taking petitioner into custody, and that he was tried and pleaded guilty on the same day, whereupon the following judgment was entered by the County Judge of said county:

> "It is considered, ordered and adjudged that the defendant is guilty as charged in the affidavit, Further ordered that said defendant do pay a fine of $100.00 to include costs of this case, and that in default of payment thereof he serve a period of 60 days in the County jail of Brevard County, Florida."

The said record further shows that a commitment issued on said judgment on the same day.

The said Circuit Court, on January 11, 1943, issued a writ of habeas corpus, addressed to the appellee, requiring him to make due return to the writ on the same day, and if the petitioner was in his custody or control, to produce his body together with the cause of his detention and restraint, and show cause why he should not be discharged therefrom. At said time, the appellee produced the petitioner, and gave as

the cause of the detention and restraint the commitment from the County Judge's Court based upon the judgment and conviction as set forth in the petition. The return did not deny any of the allegations of fact in said petition.

The Circuit Court, after hearing, adjudged the statute upon which the warrant, judgment and conviction was founded to be unconstitutional and void and the imprisonment illegal, and thereupon discharged the petitioner from the custody of the appellee.

[fol. 35] An appeal from said judgment was duly perfected to the Supreme Court of Florida by appellee, and on July 24, 1943, the Court pronounced its opinion and final judgment in said cause, and reversed the judgment of the Circuit Court aforesaid, holding that the imprisonment of the petitioner was lawful and consistent with the Constitution of the United States. The substance of the holding of the Court was that the first section of the aforesaid statute of Florida was not in violation of the 13th Amendment to the Constitution of the United States, in cases where the second section was not brought into play by the introduction of testimony and use of the presumption of intent created by the second section, e. g., when the conviction is based upon a plea of guilty. The Court did not discuss the alleged violation of the equal protection clause of the 14th Amendment to the Constitution of the United States, but the judgment necessarily overruled the claim of the petitioner grounded upon said clause.

By the aforesaid final judgment the Supreme Court of Florida has directed the Circuit Court of Brevard County, Florida, to vacate its judgment aforesaid, and to remand the petitioner to the custody of the appellee for the execution of the sentence of the County Judge of said County.

That the Supreme Court of Florida is the highest Court of the State of Florida in which a decision of this suit can be had.

That in said suit there is drawn in question the validity of a statute of the State of Florida on the ground that said statute is repugnant to the Constitution and laws of the United States, and the decision is in favor of its validity, notwithstanding your petitioner's contention that said statute violates the Thirteenth and Fourteenth Amendments to the Constitution of the United States and laws duly enacted in pursuance thereof.

[fol. 36] That therefore in accordance with section 237(a) of the Judicial Code, Section 344 of Title 18 of the United States Code, and in accordance with the Rules of the Supreme Court of the United States, your petitioner respectfully shows this Court that the case is one in which, under the legislation in force when the Act of January 28, 1928, was passed, to-wit, under Section 237(a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error, as a matter of right.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignment of errors, filed herewith, pursuant to Rule 9 and 46 of the Rules of the Supreme Court of the United States; and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

Wherefore, your petitioner prays for the allowance of an appeal from the said Supreme Court of Florida, the highest Court of said State in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and final judgment of the said Supreme Court of Florida may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of Florida, under his hand and the seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of the petitioner, that the supersedeas bond tendered by the petitioner be approved, and that the appeal thereupon operate as a supersedeas.

[fols. 37-38] This 12th day of August, 1943.

R. F. Maguire, W. H. Poe, Attorneys for Petitioner.

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[fol. 39] In Supreme Court of the United States

[Title omitted]

Assignment of Errors—Filed August 16, 1943

Comes now Emanuel Pollock, the petitioner and appellant herein, in support of his petition for appeal herein, and assigns the following errors in the records and pro-

ceedings herein, as grounds for reversal of the decision and judgment of the Supreme Court of Florida:

I

The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Thirteenth Amendment to the Constitution of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's rights under said Amendment to the Constitution of the United States.

II

The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to the Fourteenth Amendment to the Constitution of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Flor-[fols. 40-55] ida, was lawful and not in violation of petitioner's rights to the equal protection of the laws, and to due process of law.

III

The Supreme Court of Florida erred in said decision and judgment by holding that Chapter 7917, Laws of Florida, 1919, and re-enacted as Sections 817.09 and 817.10 of the Florida Statutes of 1941, is not repugnant to Section 56, Title 8, of the United States Code, formerly Section 1990, Revised Statutes of the United States, and that the judgment of conviction and sentence thereunder by the County Judge of Brevard County, Florida, was lawful and not in violation of petitioner's right under said section of the laws of the United States.

The statute aforesaid reads as follows:

> "Section 1. (Sec. 817.09, Fla. Stat. 1941). Obtain-property by fraudulent promise to perform labor or service.—Any person in this state who shall, with intent to injure and defraud, under and by reason of a contract or promise to perform labor or service, pro-

cure or obtain money or other thing of value as a credit, or as advances, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months. "Section 2. (Sec. 817.10, Fla. Stat. 1941). Same; prima facie evidence of fraudulent intent.—In all prosecutions for a violation of sec. 817.09 the failure or refusal, without just cause, to perform such labor or service or to pay for the money or other thing of value so obtained or procured shall be prima facie evidence of the intent to injure and defraud."

Wherefore, on account of the errors hereinbefore assigned; petitioner prays that the said decision and judgment of the Supreme Court of Florida, dated July 24, 1943, in the above entitled cause (entitled H. T. Williams, as Sheriff of Brevard County, vs. Emanuel Pollock, in said Supreme Court of Florida) be reversed, and judgment entered in favor of this appellant.

This 12th day of August, 1943.

R. F. Maguire, W. H. Poe, Attorneys for Appellant.

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[fol. 56] In Supreme Court of the United States

[Title omitted]

Order Allowing Appeal—August 16, 1943

The petition of Emanuel Pollock, the above named appellant, who was appellee before the Supreme Court of Florida in the above entitled cause, for an appeal in said cause to the Supreme Court of the United States from the judgment of the Supreme Court of Florida, having been filed with the Clerk of this Court, and presented herein, accompanied by assignments of error and statement as to jurisdiction, all as provided by rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment dated the 24th day of July, 1943, of the Supreme Court of Florida, as prayed in said petition, and that the Clerk of

the Supreme Court of Florida shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand, and the seal of said Court, a true copy of the material parts of the record herein, which [fols. 57-58] shall be designated by praecipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further Ordered that the said appellant shall give a good and sufficient supersedeas bond in the sum of Five Hundred ($500.00) Dollars, that said appellant shall prosecute said appeal to affect and answer all damages and costs, and perform and abide by the judgment of the Supreme Court of Florida rendered herein if he fails to make his plea good, and that said bond, when filed and approved, shall stay the sending down of the mandate herein and of all proceedings in this cause until the final disposition of this cause by the Supreme Court of the United States.

Done and Ordered at Tallahassee, Florida, this 16th day of August, 1943.

Rivers Buford, Chief Justice of the Supreme Court of Florida.

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[fols. 59-61] Supersedeas bond on appeal for $500.00 approved and filed Aug. 17, 1943 omitted in printing.

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[fols. 62-67] Citation in usual form showing service on J. Tom Watson, filed Aug. 16, 1943, omitted in printing.

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[fol. 68] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed August 18, 1943

Comes now the appellant and the appellee in the above styled cause, and stipulate and agree that, in making up the transcript on said appeal, the Clerk of the Supreme Court of Florida shall include therein the following:

1. Transcript of the Record of the Circuit Court of Brevard County, Florida, filed by the appellant on the appeal to the Supreme Court of Florida.

2. The opinion of the Supreme Court of Florida, dated July 24, 1943.

3. The final judgment of the Supreme Court of Florida, in said cause, rendered on the 24th day of July, 1943.

4. The petition for appeal to the Supreme Court of the United States.

5. The assignments of errors and prayer for reversal filed with said petition.

6. The jurisdictional statement filed with said petition.

7. The order of the Chief Justice of the Supreme Court [fol. 69] of Florida allowing said appeal, and fixing the amount and terms of the supersedeas bond.

8. The supersedeas bond and the endorsement of approval thereon.

9. The citation, with the acknowledgment of service endorsed thereon.

10. The statement in compliance with paragraphs 2 and 3 of Rule 12 of the Rules of the Supreme Court of the United States, with the acknowledgment of service endorsed thereon.

11. This stipulation.

12. Certificate of the Clerk.

It is further stipulated and agreed that the foregoing describes all of the papers and records necessary to a determination of the appeal herein.

R. F. Maguire, W. H. Poe, Attorneys for Appellant. J. Tom Watson, Attorney General of the State of Florida, and Attorney for Appellee. John C. Wynn, Assistant Attorney General.

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[fol. 70] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 71] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed September 20, 1943

Comes now the appellant and adopts his assignments of error as his statement of the points to be relied upon, and

represents that the whole of the record, as filed, is necessary for the consideration of the case.

This September 18, 1943.

R. F. Maguire, W. H. Poe, Attorneys for Appellant.

STATE OF FLORIDA,
County of Orange:

W. H. Poe personally appeared before the undersigned Notary Public and, after being duly sworn, stated that, on September 18, 1943, he mailed by United States mail a copy of the foregoing statement to J. Tom Watson, Attorney General of Florida, and attorney for the appellee, at his office in Tallahassee, Florida.

W. H. Poe.

Sworn to and subscribed before me this 18th day of September, A. D. 1943. Kathleen Boyd, Notary Public, State of Florida at large. My commission expires May 4, 1946. Bonded by American Surety Co. of N. Y. (Seal.)

[fol. 71½] [File endorsement omitted.]

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[fol. 72] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 25, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

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Endorsed on cover: File No. 47,838. Florida, Supreme Court. Term No. 345. Emanuel Pollock, Appellant, vs. H. T. Williams, as Sheriff of Brevard County, Florida. Filed September 11, 1943. Term No. 345, O. T. 1943.